

## REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

No claims have been canceled or added in this paper. Claims 1, 7, 16 and 24 have been amended in this paper. Therefore, claims 1, 5-9, 11-14, 16-18, 22-26, 28-31 and 58 are under active consideration. Of these claims, claims 16-18, 22-26, 28-31 and 58 have been withdrawn as being directed to non-elected species, as discussed further below. Therefore, claims 1, 5-9 and 11-14 are under active consideration.

In the outstanding Office Action, the Patent Office communicates, in pertinent part, the following restriction requirement:

This application contains claims directed to the following patentably distinct species of the claimed invention:

- (a) the carrier layer
  - (1) as set forth in claims 1 and 58;
  - (2) as set forth in claim 16;
- (b) the release coat
  - (1) as set forth in claims 1 and 58;
  - (2) as set forth in claim 16;
- (c) the binder resin of the transfer label
  - (1) as set forth in claims 1 and 16;
  - (2) as set forth in claim 58.

Applicants are required under 35 U.S.C. 121 to elect a single disclosed species in each category (a)-(c) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there is no generic claim.

Applicants are advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

In response to the above election of species requirement, Applicant respectfully elects with traverse (a) the carrier layer as set forth in claims 1 and 58; (b) the release coat as set forth in claims 1 and 58; and (c) the binder resin of the transfer label as set forth in claims 1 and 16 (as herein amended). Claims 1, 5-9 and 11-14 are readable on the elected species.

The foregoing election is made with traverse because the Patent Office has failed to demonstrate that a serious burden would be imposed on the examiner if the examiner were to examine all of the species at the same time. MPEP 803 provides that “[t]here are two criteria for a proper requirement for restriction between patentably distinct inventions.” One such criterion is that “[t]he inventions must be independent...or distinct as claimed.” The other criterion is that “[t]here must be a serious burden on the examiner if restriction is required.” The Patent Office has failed to explain why, at this stage in the prosecution of the subject patent application, it would pose a serious burden for the examiner to examine all of the species together, particularly in view of the fact that at least some of these species have previously been recited in claims which presumably have already been examined.

Therefore, for at least the above reasons, the foregoing requirement should be withdrawn.

Applicant’s grounds for traversal are not to be construed as an admission that the various species are obvious over one another.

Lastly, Applicant seeks clarification of the Patent Office’s statement on page 2 of the outstanding Office Action that “[t]he grounds of rejections in sections 4 and 5 of prior Office action dated 1/27/2005 are withdrawn for now, and to be reinstated upon Applicants’ election of species.” This statement seems to suggest that the Patent Office has already prejudged the present application

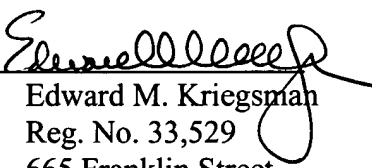
and will reinstate the previous art rejections, regardless of Applicant's election of species. If this is the case, Applicant fails to see why it is necessary for Applicant to make an election since the Patent Office has apparently already completed its examination and rendered a decision for whichever species has been elected. Applicant hopes that the choice of words selected by the Patent Office was not intended to convey this message.

In conclusion, it is respectfully submitted that the present application is in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.


Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 12, 2005

  
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